

# COMPLIANCE BULLETIN

## Dependent Coverage Rules: Reminders for Employers

Many health plans provide coverage for employees' dependent children. Since 2010, the Affordable Care Act (ACA) has imposed strict requirements on plans that provide dependent coverage. These requirements prohibit restrictions that employers had frequently used to limit dependents' eligibility for coverage prior to 2010.

Specifically, group health plans and health insurance issuers offering group or individual coverage that provide dependent coverage to children on their parents' plans must make coverage available until the adult child reaches **age 26**.

As employers look for ways to reduce the costs of providing coverage to employees and their families, they may be considering limiting dependent coverage, or imposing additional costs or restrictions on eligibility. However, these measures may be prohibited by the ACA. This Compliance Bulletin provides an overview of the rules that employers must follow when offering dependent coverage.

### Action Steps

Heading into the upcoming 2021 open enrollment season, employers should review the health plan rules regarding dependent coverage to ensure that their health plans are compliant.

Employers should be cautious in implementing any cost-saving measures that relate to dependent eligibility. Many eligibility restrictions that employers commonly used prior to the ACA becoming effective are no longer permitted. These rules also prohibit charging more for dependent coverage based on the dependent's age, if the dependent is under age 26.

### Coverage Rules

- Group and individual health plans that provide dependent coverage for children must provide this coverage until the dependent attains age 26.
- These dependents must be offered all benefit packages and cannot be required to pay more for coverage than similarly situated individuals.
- Eligibility for dependent coverage cannot be based upon financial dependency, marital status, enrollment in school, residency or other factors.

### State Law Requirements

- State law may require plans to provide dependent coverage beyond age 26.
- Some state laws apply to all dependents while others require coverage to be provided beyond age 26 to disabled dependents.



## ACA Age 26 Dependent Coverage Rules

### *Restrictions on Definition of Dependent*

The ACA requires health plans and health insurance issuers that offer dependent coverage to children on their parents' plans to make the coverage available until the child reaches age 26. This coverage requirement became effective for plan years beginning on or after Sept. 23, 2010. It applies to both married and unmarried children.

A child's eligibility for dependent coverage under this rule is based solely on the child's age and his or her relationship to the participant. If the child is under age 26 and is the participant's child, he or she is eligible for dependent coverage. This means that a plan or issuer may not deny or restrict coverage for a child who is under age 26 based on whether the child is financially dependent on the participant, resides with the participant or with any other person, is a student, is employed or any combination of these factors.

#### **Who Is a "Child" under the Age 26 Mandate?**

Final regulations under the ACA define a "child" to include biological and legally adopted children (including children placed for adoption), stepchildren and eligible foster children. An eligible foster child means a child placed with the employee by an authorized placement agency or by judgment, decree or other order of any court of competent jurisdiction. Children who do not fall under one these categories (such as grandchildren) are not required to be covered to age 26, even if they are eligible for health plan coverage. Also, plans can impose other eligibility criteria on children who do not fall under the ACA's age 26 coverage mandate, such as a condition that the individual be a dependent for income tax purposes.

Failing to comply with this coverage mandate may trigger an excise tax of up to **\$100 per day** with respect to each individual to whom the failure relates.

### *Uniformity in Plan Terms*

The terms of the plan or coverage providing dependent coverage of children, including premiums charged, cannot vary based on age (except for children who are age 26 or older). This means that adult children must be offered all of the benefit packages available to other plan participants and cannot be required to pay more for coverage. For example, a plan may not impose an additional premium surcharge for children who are older than age 18. This type of surcharge would violate the uniformity requirement because the plan varies the terms for dependent coverage of children based on age.

This uniformity requirement does not prohibit plans from imposing cost of coverage increases for tiers with more covered individuals, because these increases apply without regard to the age of any child. In addition, distinctions based upon age that apply to all coverage under the plan are permissible. However, for individual and small group plans required to provide essential health benefits, distinctions based on age may be considered discriminatory under HHS regulations regarding essential health benefits.

## State Law Requirements

Most states updated their insurance laws to align with the ACA's dependent coverage requirements. Many states also require insured plans to provide dependent coverage beyond the state's normal age limit for disabled dependents. However, some state laws require insured group health plans to cover all dependents beyond age 26. For example, in New



Jersey, unmarried children can stay on a parent's plan until they are 31 years old. These state mandates continue to apply to insured health coverage, to the extent they require coverage past age 26.

## Tax Rules

The ACA also revised the Code to provide that the extended dependent coverage is tax-free to the employee. However, the tax rules differ slightly from the coverage requirement. Under the Code, tax-free coverage is available, effective March 30, 2010, to “any child (son, daughter, stepson, stepdaughter, adopted child or eligible foster child of the taxpayer) who as of the end of the taxable year has not attained age 27.” If the child has coverage beyond age 26, that coverage will be tax-free until the end of the tax year.

Because of the broad tax exclusion provided by the ACA, this definition may be the only one a plan may need to review to determine if the coverage is tax-free for the employee’s child. However, there are circumstances where the Code Section 152 definition of dependent may still be necessary. For example, if the dependent is over age 26 and is disabled or is a grandchild, niece or nephew rather than the employee’s child, health plan coverage may be provided on a tax-free basis if the Code Section 152 definition is met.

## Relationship with the ACA’s Employer Shared Responsibility Rules

The ACA’s age 26 coverage mandate does not require plans and issuers to offer dependent coverage at all. Instead, the mandate requires plans and issuers that provide coverage to dependent children to make that coverage available until the child reaches age 26. However, effective Jan. 1, 2015, the ACA’s employer shared responsibility rules began imposing penalties on applicable large employers (ALEs)—those with 50 or more full-time and full-time equivalent employees—that do not offer coverage to all full-time employees and their dependent children.

For purposes of the employer shared responsibility rules, a “dependent” is defined as a biological or adopted son or daughter who is under 26 years of age. The employer shared responsibility [final regulations](#) clarify that a child is a dependent for purposes of the employer shared responsibility penalties for the entire calendar month in which he or she attains age 26. However, the final rules exclude stepchildren and foster children from the definition of dependent.

As a result, ALEs that are subject to the employer shared responsibility rules must offer dependent coverage to children of their full-time employees through the entire month in which the dependent attains age 26 in order to avoid the employer shared responsibility penalties. This means that:

- ☒ Employers are not subject to penalties under the adult coverage mandate if they do not offer dependent coverage at all, or terminate dependent coverage on the child’s 26th birthday; but
- ☒ ALEs that are subject to the ACA’s employer shared responsibility rules may be subject to penalties if they do not offer dependent coverage to the children of their full-time employees through the entire month in which the dependent attains age 26.

**Employers who are subject to both of these ACA mandates should be sure to comply with both requirements.**